

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF ROBERT ) APPEAL NO. 07-A-2145  
C. HORTON from the decision of the Board of ) FINAL DECISION  
Equalization of Ada County for tax year 2007. ) AND ORDER

**AGRICULTURAL EXEMPTION APPEAL**

THIS MATTER came on for hearing October 18, 2007 in Boise, Idaho before Hearing Officer Travis Vanlith. Board Members Lyle R. Cobbs, Linda S. Pike and David E. Kinghorn participated in this decision. Appellant Robert C. Horton appeared. Chief Deputy Tim Tallman and County Appraiser Dan Curtis appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization denying a claim for exemption (protest of valuation) for property described as Parcel No. R6576000301.

**The issue on appeal is whether grazing land associated with the subject parcel qualifies for an exemption from property taxes pursuant to Idaho Code §§ 63-602K and 63-604, the agricultural lands exemption.**

**The decision of the Ada County Board of Equalization is affirmed.**

FINDINGS OF FACT

The proper assessment treatment of pasture land included with the subject parcel is the only contested issue. In 2007, the assessed land value increased to \$200,000 after the agricultural exemption was removed. Appellant requests the land used for livestock grazing by a lessee be granted exempt status pursuant to Idaho Code §§ 63-602K and 63-604.

Prior to issuing 2007 tax year assessments, the county land records department discovered the land area (land ownership) associated with the subject parcel had been in error. The correct land area (legal description) associated with the subject parcel was declared to be 4.538 acres. In prior years, the land size for this parcel record reflected 5.191 acres less a right-of-way (ROW).

The qualifying criteria for an agricultural exemption grant is different depending on which land size applies.<sup>1</sup> The County maintains the subject land must qualify under the “five acres or less” criteria and that the property owner has not provided proof of such entitlement. Appellant claims the qualification should be measured under the “over five acres” standard. The pasture land on the subject parcel is grazed in conjunction with the land of an adjacent parcel, and together they comprise the 5.191 acre area. A couple of arguments are presented in that regard. However Appellant did not dispute the County contention that the owners of record for the subject parcel and the contiguous ROW parcel to the south are different.

The County shows the owner of record on the adjacent parcel to be a municipal corporation. Taxpayer owns no other adjacent parcels, but suggests a possible adverse possession against the government parcel. The County relied on the record owner reflected in its muniments of title.

Appellant argued administrative property tax rule 645 (IDAPA 35.01.03.645.03.d), declaring that contiguous land must be under the “same ownership”, is unlawful as it goes beyond the statute. It is contended that Appellant should be found, for property tax assessment purposes, to be the owner of the 5.191 acres or alternately that the grazing use over a contiguous five-plus-acres is all that is required.

### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value or exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Idaho Code § 63-604 provides in pertinent part as follows.

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<sup>1</sup>Idaho Code § 63-604(1)(a) and (b).

**Land actively devoted to agriculture defined.**

(1) For property tax purposes, land which is actively devoted to agriculture shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

(i) It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or

(ii) It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code; or

(iii) It is used by the owner for the grazing of livestock to be sold as part of a for-profit Enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or

(iv) It is in a cropland retirement or rotation program.

(b) The area of such land is five (5) contiguous acres or less and such land has been actively devoted to agriculture within the meaning of subsection (1)(a) of this section during the last three (3) growing seasons; and

(i) It agriculturally produces for sale or home consumption the equivalent of fifteen percent (15%) or more of the owner's or lessee's annual gross income; or

(ii) It agriculturally produced gross revenue in the immediately preceding year of one thousand dollars (\$1,000) or more. When the area of land is five (5) contiguous acres or less, such land shall be presumed to be nonagricultural land until it is established that the requirements of this subsection have been met.

There is no dispute with Appellant's description of the grazing that is occurring on both of the two land areas presented in this appeal. Both parcels are, at least in part, annually grazed by the livestock of a lessee. The taxpayer brings this claim for exemption based on an argument that the applicable land size for determining the exemption is 5.191 acres and thus the germane subsection is 63-604(1)(a). The applicability of this particular size unit is said to be regardless of who the Board might determine owns the land (taxpayer or another). Appellant's case as presented was somewhat more involved. But nothing further will be summarized here.

The County reports its public records show the subject parcel's record owner has title in 4.538 acres. This was unrefuted and stands apart from a potential claim of adverse possession

against the government. And since the owner did not seek exemption nor offer necessary proofs in association with this size, no grant of the agricultural exemption should be forthcoming. Idaho Code § 63-604(1)(b).

A statute granting tax exemption cannot be extended by judicial construction so as to create an exemption not specifically authorized. Exemptions are never presumed. The burden is on the claimant to establish [support] clearly a right to exemption. It must be in terms so specific and certain as to leave no room for doubt. *Sunset Memorial Gardens, Inc. V. Idaho State Tax Comm'n*, 80 Idaho 206, 219, 327 P.2d 766, 774 (1958); Corp. of the Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 416, 849 P.2d 83, 86 (1993). A claim of exemption from tax must be justified, if at all, by the terms of the statute. Roeder Holdings v. Bd. of Equalization, 136 Idaho 809, 813, 41 P.3d 237, 241 (2001).

This claim presents an actual grazing use of the subject parcel. There is no evidence offered in support of a claim to exemption for land of “five (5) contiguous acres or less” under § 63-604(1)(b), I.C. Therefor to decide the claim, the Board must determine if the subject parcel contains the suggested 5.191 acres or alternately if another’s land may be considered in regards to meeting the “more than five (5) contiguous acres” threshold in subsection (1)(a). For the reasons expressed below, we hold the grazing land on subject parcel does not qualify for an exemption.

The Supreme Court has long recognized and tax statutes so hold, the owner of record title is the person to be considered as the taxpayer. Idaho Code §§ 63-201(19), 63-212, 63-307; Russet Potato Co. v. Board of Equalization, 93 Idaho 501, 465 P.2d 625 (1970). The owner of record on the subject parcel has title to 4.538 acres. This owner of record has no record title to any adjoining parcels. To suggest the land of a different, adjacent owner may, or should, be considered toward exceeding the five-acre threshold is without merit. To do so would produce

absurd results clearly outside that contemplated by the Legislature and does further tend to negate the Legislative intent or purpose in having a different standard for smaller acreages or plots. If the taxpayer has contiguous land parcels they may be considered together as detailed by the statute. But there is no legal basis for construing the agricultural exemption statute as suggested by Appellant. A lessee's cattle may graze over an area involving multiple parcels, perhaps even under a lease agreement, but where different taxpayers (owners) are involved, the Board finds each must qualify on their own property ownership and use.

Appellant has not demonstrated entitlement to exemption under the five acres or less standard. Appellant is not the record owner of land or contiguous lands exceeding five acres. The subject grazing land is not "land actively devoted to agriculture" as defined in Idaho Code § 63-604. Therefore it does not qualify for exemption and the Board will therefor affirm the decision of the Ada County Board of Equalization.

#### FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, affirmed.

MAILED April 1, 2008